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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 CHRISTOPHER LEON SMITH,

9 Plaintiff,

10 v.

11 LAKEWOOD POLICE DEPT., *et al.*,

12 Defendants
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No. 09-5446 FDB

ORDER ADOPTING REPORT AND
RECOMMENDATION DISMISSING
ACTION WITHOUT PREJUDICE

15 This matter comes before the Court on the recommendation of the Magistrate Judge that
16 this prisoner civil rights action be dismissed. As detailed by the Magistrate Judge, despite being
17 given the opportunity to cure his complaint, the Plaintiff's amended civil rights complaint
18 challenges the propriety of Plaintiff's arrest and validity of a police search leading to his
19 conviction.
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21 Plaintiff may not maintain a 42 U.S.C. § 1983 action unless and until the conviction or
22 sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus.
23 Heck v. Rodriguez, 512 U.S. 477, 487(1994). Plaintiff's challenge would necessarily imply the
24 invalidity of the judgment or continuing confinement, and must be brought as a petition for a
25 writ of habeas corpus, not under § 1983. Butterfield v. Bail, 120 F.3d 1023, 1024 (9th Cir. 1997).
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1 The Court, having reviewed the Report and Recommendation of Magistrate Judge J.
2 Richard Creatura and the remaining record, does hereby find and ORDER:

- 3 (1) The Court adopts the Report and Recommendation;
- 4 (2) The action is DISMISSED WITHOUT PREJUDICE as Plaintiff must
5 receive relief by way of Habeas Corpus prior to the claims accruing.
- 6 (3) The Clerk is directed to send copies of this Order to Plaintiff, and to the Hon. J.
7 Richard Creatura.

8 DATED this 13th day of October, 2009.

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11 FRANKLIN D. BURGESS
12 UNITED STATES DISTRICT JUDGE
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